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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CANDACE SCHELBERG PEZZUTI,)	2:07-cv-3602-CS-GAY
)	
)	
Plaintiff,)	
vs.)	
)	
CHRISTOPHER J. SCHELBERG,)	
)	
Defendant.)	
_____)	

ERRATA TO PLAINTIFF'S MOTION TO LIFT STAY ON DISCOVERY

COMES NOW, the Plaintiff, CANDACE SCHELBERG PEZZUTI, by and through her undersigned counsel, KIRK T. KENNEDY, ESQ., hereby files this ERRATA to her filed motion for an Order to lift the pending stay on discovery and allow the case to proceed.

Plaintiff's errata deletes an erroneously filed, non-relevant declaration which was attached to the originally filed motion.

In support hereof, Plaintiff relies on the following points and authorities.

Dated this 25th day of August, 2008.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
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POINTS AND AUTHORITIES

By way of Court Order entered on July 30, 2008, this Court continued an existing stay on the commencement of discovery in this case pending the filing by the Defendant of his contemplated motion to dismiss by August 5, 2008. The Defendant has failed to file any motion to dismiss. Also, in earlier proceedings in this matter, the Defendant had requested time to file a motion to dismiss, as well as requesting two court-ordered continuances to file such a motion, however, the Defendant has failed to file the motion.

This Court has repeatedly granted the Defendant time and continuances to file a motion to dismiss under FRCP Rule 12, however, the Defendant has not filed the motion despite repeated leave of court. The Court has also maintained a continuous stay on discovery proceedings and the mandatory conference required by FRCP Rule 26(f) due to the requests of the Defendant.

Plaintiff seeks to move forward with this matter and would request the Court's consideration to lift and remove the existing stay on discovery to allow the parties to file a proposed scheduling plan and discovery order and commence discovery proceedings in this case. Discovery needs to move forward and further delays have caused harm to the Plaintiff's case preparation and investigation.

Wherefore, Plaintiff moves the Court to grant this motion and allow discovery to commence. Additionally, Plaintiff moves the Court to order that any Rule 26(f) conference may be conducted by telephone between counsel.

Dated this 25th day of August, 2008.

/s/Kirk T. Kennedy
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CERTIFICATE OF SERVICE

I hereby affirm that I am employed in Clark County, Nevada for the law firm of Kirk T. Kennedy, Esq. and that I am over the age of 18 years and that on the 25th day of August, 2008, I served the foregoing Motion upon the Defendant at the address below by depositing same in the U.S. Mail, postage prepared, first class delivery and by cm/ecf delivery to:

Mark J. Kurzman, Esq.
275 N. Middletown Road, 2nd Fl.
Pearl River, NY 10965-1142

/s/Melisa Roman
Employee of Kirk T. Kennedy, Esq.

